HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 312 of 2004 (M/S)

Satyapal Gupta

Versus.

Distt. Judge Dehradun & others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 27.4.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 312 of 2004 (MS)

Satyapal Gupta ….. Petitioner

Versus

District Judge & others …… Respondents

Sri Alok Singh, Advocate for the petitioner
Sri B.P. Nautiyal, Advocate for the respondents.

Dated: 27.4.2004

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for the issue of a writ in the nature of certiorari quashing the order dated 16.4.2004 passed by the respondent no.1, annexure-1 to the writ petition.

Briefly stated the facts giving rise to the present writ petition are that respondent no.2 has field a civil suite being O.S. No. 217 of 2004 in the court of Civil Judge (SD), Dehradun for permanent injunction along with an application for ad interim injunction.

On 12.4.2004 the trial court has passed the following order:

"*Let the copies be given to the defendants objection and disposal on 19.4.2004. The plaintiff to fie the map of entire house*

showing every rooms in possession of each brother. The same shall also be done by defendant no.1.

It is however held that if defendant no.1 found in possession of excess of his share, he shall be bound to surrender in favour of another brother whose share is to be lesser."

Against the aforesaid order an appeal was preferred. The appellant court has passed the following order on 12.4.2004:

"Let the copies be given to the defendants objection and disposal on 19.4.2004. The plaintiff to file the map of entire house showing every rooms in possession of each brother. The same shall also be done by defendant no.1

It is however held that if defendant no..l found in possession of excess of his share, he shall be bound to surrender in favour of another brother whose share is to be lesser."

The short submission of the petitioner is that no appeal is maintainable in view of the fact hat injunction application is still pending and no final order has been passed. He has relied upon the judgment in the case U.P. Jal Nigam vs. II ADJ Dehradun 1998(2) ARC 623, where a single Judge of Allahabad High Court has held as under:

"Rule 3 is indissolubly an integral part of Rulesl 1 and 2 of Order XXXIX in that it lays down the procedure which is essential to

be followed by the Courts where an application for injunction is filed under Rule 1 or Rule 2 of Order XXXIX. Normally, the procedure is that no injunction shall be granted under Rules 1 or 2 of Order XXXIX without giving notice on the application to the Opp. Party, except where the Court for reason to be recorded in writing, is of opinion that the object of granting injunction would be defeated by delay. The power to grant injunction, albeit, included powers to reject the application for temporary injunction but what is appealable under order XLIII, Rule 1or is an order granting injunction with or without notice and an order rejecting the application for grant of the injunction under Rule 1 or Rule 2 and not an order just issuing notice under Rule 3 of Order XXXIX. In other words, refusal to grant exparte injunction is not appealable."

On the other hand Sri B.P. Nautiyal has opposed the writ petition on the ground that the appeal was very much maintainable in as much as trial court has not only issued notice but has also passed an order on the injunction application, although application for ad interim injunction is still pending. Both the parties have submitted that 29.4.2004 is fixed before the trial Court.

Both the parties have admitted that in view of the fact that since the application 6-C for interim injunction has not yet been disposed of, therefore, the parties may be given liberty to submit their affidavits

before the trial court and interim injunction application may be finally disposed of by the trial court.

Consequently the trial Court is directed to decide the injunction application finally within a period of six weeks. Till then the order passed by the appellate court maintaining of status quo shall continue.

Both the parties have agreed that let the application for injunction be decided finally instead of contesting the appeal for interim injunction. Parties have further agreed that order of status quo may be continued till disposal of the application for injunction by the trial Court.

Subject to the observations, made above the writ petition is disposed of. No order as to costs.

(Rajesh Tandon J.)

27.04.2004
Dhyani